



**Davida Grant**  
Senior Counsel

SBC Services Inc.  
1401 I Street NW, Suite 400  
Washington, D.C. 20005  
Phone 202 326-8903  
Fax 202 408-8745

REDACTED – FOR PUBLIC INSPECTION

June 8, 2005

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Mr. Thomas Navin  
Chief, Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

**Re: Ex Parte, Directory Assistance Use Restrictions  
CC Docket No. 99-273**

Dear Mr. Navin:

At your request, SBC summarizes below the pertinent facts surrounding [REDACTED] assessment of a redistribution fee on SBC for the resale of [REDACTED] DA listings.

[REDACTED] has advised SBC that it will stop providing directory assistance ("DA") listings to SBC after June 10, 2005, unless SBC agrees to pay [REDACTED] cents per listing from December 1, 2004 to April 30, 2005. As you are aware, SBC is required to resell all local directory assistance listings included in the SBC directory assistance database.

In October 2004, [REDACTED] notified SBC that it was raising its rates for DA listings to [REDACTED] cents per listing effective December 1, 2004. Included in that [REDACTED] cent per listing price is a [REDACTED] cent per listing redistribution fee that [REDACTED] is charging SBC for reselling [REDACTED] DA listings. SBC believes that this redistribution fee is unlawful and, accordingly has withheld, since December, the amount attributable to the redistribution fee. On April 11, 2005, [REDACTED] notified SBC that it would stop providing DA listings to SBC effective May 14, 2005, unless SBC paid all outstanding invoices, which were principally for the redistribution fee.

On April 11, 2005, SBC, in writing, advised [REDACTED] that it interpreted the FCC's rules to prohibit [REDACTED] from charging a redistribution fee. [REDACTED] agreed to postpone the cutoff date until May 31, 2005, which was subsequently extended to June 10, 2005. On June 3, 2005, [REDACTED] again advised SBC via email that if it did not receive full payment of the [REDACTED] rate, it would cut off further provision of DA listings after June 10, 2005.

[REDACTED] provides approximately [REDACTED] million updated DA listings to SBC on a yearly basis. On a daily basis, [REDACTED] provides approximately [REDACTED] updated DA listings. If [REDACTED] were to withhold its DA listings, the [REDACTED] DA information in SBC's database would quickly become stale, which would compromise the accuracy and completeness of SBC's DA service. If any significant period of time lapsed before the provision of the [REDACTED] listings was resumed, SBC would be forced to repurchase the entire [REDACTED] DA database for the SBC region to ensure accurate and up-to-date listings. That would cost an estimated [REDACTED].

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SBC believes that the redistribution fee constitutes an impermissible use restriction in violation of the FCC's 2001 and 2005 DA orders.<sup>1</sup> In those orders, the Commission expressly concluded and reaffirmed that carriers may not prohibit the resale of their DA databases by DA providers.<sup>2</sup> That holding is consistent with a long line of Commission precedent, finding that a vibrant resale market promotes competition and that resale restrictions are thus presumptively unreasonable.<sup>3</sup> This presumption extends not only to restrictions that completely bar resale, but to those that unreasonably limit the ability to engage in resale. Wholly apart from the issue of whether *any* redistribution fee may be assessed on a product the Commission has squarely held may not be subject to resale restrictions, clearly *this* redistribution fee is patently unreasonable. Indeed, the redistribution fee that [REDACTED] seeks to impose increases by [REDACTED] the cost of its DA listings. [REDACTED] does not and cannot claim that it incurs additional costs when SBC (or any other entity) resells [REDACTED] DA listings. To the contrary, it appears to claim that, so long as it does not restrict resale outright, it is free to impose any fee it wants on the resale of its listings. As noted, SBC does not believe that [REDACTED] position can be squared with the Commission's DA orders or its general policies regarding resale.

Further, it would undermine the Commission's stated goal of fostering competition in the DA marketplace – one of the principal justifications for the DA use restriction prohibition.<sup>4</sup> For remote areas in particular, SBC may very well decide not to purchase [REDACTED] DA listings, rather than pay the [REDACTED] redistribution fee. This of course impacts SBC's ability to resell its listings to third parties, who seek current and complete DA listings from SBC for its 13 state territory.<sup>5</sup> For those providers that chose to purchase SBC's incomplete listings, rather than pay [REDACTED] the redistribution fee, they unquestionably are disadvantaged competitively vis-à-vis and other carriers.

Sincerely,

/s/ Davida Grant

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<sup>1</sup> *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC Docket No. 99-273, *First Report and Order*, 16 FCC Rcd 2736 (2001) ("*First DA Order*"), *order on reconsideration* (rel. May 3, 2005).

<sup>2</sup> *First DA Order*, 16 FCC Rcd at 2749; *Order on Reconsideration*, ¶9.

<sup>3</sup> *See AT&T Communications, Apparent Liability for Forfeiture and Order to Show Cause*, 10 FCC Rcd 1664 (1995).

<sup>4</sup> *First DA Order*, 16 FCC Rcd at 2749.

<sup>5</sup> [REDACTED] is [REDACTED] in certain areas in SBC's 13 state region.